IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 16TH AUGUST 2007 / 25TH SRAVANA 1929

WP(C).No. 24502 of 2007(P)

PETITIONER:

M/S. S.B.TIMBERS, 95-D,
SANTHAI ROAD, MATTUPETTI, DINDIGAL-642002,
TAMIL NADU, A REGISTERED PARTNERSHIP FIRM,
REPRESENTED BY ITS PARTNER, SRI.B.SENTHIL KUMAR.

BY ADV. SRI.E.P.GOVINDAN
SRI.R.D.GANESAN

RESPONDENTS:

---

1. THE INTELLIGENCE OFFICER (IB),
COMMERCIAL TAXES, TRICHUR.

2. STATE OF KERALA REPRESENTED BY
SECRETARY, TAXES DEPARTMENT, GOVERNMENT
SECRETARIAT, TRIVANDRUM.

3. V.C.SAJI, S/O.VALIAVEETTIL CHANDRAN,
PROP.CHANDRA WOOD INDUSTRIES, 24/154,
CHIYYARAM, TRICHUR DISTRICT.

4. K.M.DASAN, PROP. M/S.SAHAKARANA TIMBER
INDUSTRIES, CHENGALLOOR, PUDUKKAD,
TRICHUR DISTRICT.

R1 AND R2 BY G.P. SRI. C.K. GOVINDAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 16/08/2007, ALONG WITH WPC 23505 OF 2007 AND CONNECTED CASES THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR,J.

W.P.C. NO. 24502, 23505,23533
24515, 24541, 24581, 24611,24616
AND 24631 OF 2007

Dated this the 16th day of August, 2007

JUDGMENT

Petitioners in all these cases are timber merchants, stationed outise Kerala. The department's case is that sales apparently made to registered dealers in Kerala by the petitioners are not genuine transactions because the so-called purchasers have denied the transactions. It appears that on enquiry it was found that purchasers did not have capacity to carry on the volume of business accounted by the petitioners. Common orders demanding tax and penalty were issued against petitioners. Petitioners filed separate appeals against assessment portions and revision petitions against penalty portions. While appeals against assessments were allowed by the first appellate authority and confirmed by the Tribunal, the penalty orders are set aside and remanded by the first revisional authority. Even though petitioners filed second revisions before the commissioner, he rejected the same. Consequently penalty proceedings are still pending against

the petitioners.

2. Petitioners have produced orders of the Tribunal confirming the cancellation of assessments and demand of tax under Section 30B (4) of the KGST Act. If tax cannot be assessed, then penalty has necessarily to go. In other words, if the Tribunal's orders are accepted by the department, then I see no reason why penalty proceedings should be pursued. Counsel for the petitioners submitted that time for filing revision to High Court is over and the department has not filed any revision. Government Pleader is not in a position to say whether Government has accepted the Tribunal's order or whether belated revisions will be filed against orders of the Tribunal dismissing the departmental appeals. When similar issue came up before this Court, this Court allowed those Writ Petitions holding that as long as Tribunal's order cancelling assessment and demand of tax remains in force, there is no scope for levying penalty for alleged evasion of tax. In the circumstances, these Writ petitions are also disposed of holding that penalty proceedings cannot be pursued, if Tribunal's order cancelling assessment stands as such. However, if this Court interferes

with the orders of the Tribunal in Revision Petitions, and depending upon the modification effected in the Tribunal's orders, respondents are free to pursue the penalty proceedings.

(C.N.RAMACHANDRAN NAIR)
Judge